

BOIES, SCHILLER & FLEXNER LLP

30 SOUTH PEARL STREET • 11TH FLOOR • ALBANY, NY 12207 • PH. 518.434.0600 • FAX 518.434.0665

October 19, 2016

VIA ECF FILING

Hon. Kenneth M. Karas
United States District Court
Southern District of New York
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: *Galgano v. County of Putnam, et al.*
16-cv-03572 (KMK)

Dear Judge Karas:

We write in response to Michael A. Miranda's October 13, 2016 letter purporting to support his request to stay this proceeding as to Defendant Andres Gil.

At the September 13, 2016 hearing on this matter, the Court gave explicit notice to the parties of the documentary showing required to satisfy the statutory conditions for a stay under 50 U.S.C. § 3932 of the Service members Civil Relief Act ("SCRA"):

But if somebody -- if he's, if he's at, you know, at Ramstein Air Base and what his job there is -- let's say he is a medical officer, right. So, he's there dealing with the sick and the wounded. Presumably, a person in that situation would have access to some sort of telephone and could communicate with his or her attorney.

I mean it's not just that they are abroad. The statute doesn't say you get a stay if you are abroad. It has to be that you're basically incommunicado. You cannot communicate with your attorney, you can't assist in the case. So, again, there is no document that says he is abroad *and there is no document that says he can't communicate.*

Ex. A, excerpt of Sept. 13, 2016 Hearing Transcript at 25:20-26:7 (emphasis added).

Despite the Court's explicit statement, Mr. Miranda's submission is silent on Defendant Gil's ability *to communicate* with his attorney. In fact, we alerted Defendant Gil's counsel to this deficiency but counsel chose neither to seek a further submission nor to respond to us; he simply filed the existing, deficient letter from Lt. Col. Kornegay.

BOIES, SCHILLER & FLEXNER LLP

Hon. Kenneth M. Karas
October 19, 2016
Page 2

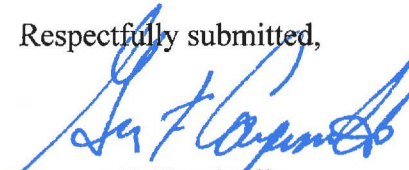
We believe that Defendant Gil is in fact able to communicate with his attorney. The accompanying article, annexed as Exhibit B,¹ indicates that members of the 411th Civil Affair's Battalion—Defendant Gil's unit—"have Skype." One sergeant, also deployed to Djibouti on the Horn of Africa, even reports communicating by Skype with his "two cats." This being the case, Defendant Gil clearly can communicate with his attorney.

Therefore, Defendant Gil is not entitled to a stay.

Should the Court nonetheless decide to grant a stay as to Defendant Gil, we respectfully request that the Court enter an order specifying that the stay only applies to Defendant Gil and that motion practice and discovery, including document discovery and depositions, are continuing with respect to all other Defendants.

Thank you for your attention to this matter.

Respectfully submitted,



George F. Carpinello

cc via ECF filing:

Lewis R. Silverman
lsilverman@silvermanandassociatesny.com

Michael E. Longo
ml@lydeckerdiaz.com

Michael A. Miranda
mmiranda@msssv.com

¹ This press account also dispels Mr. Miranda's concern that the specific location of Defendant Gil's deployment is somehow confidential.

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE GALGANO,

x

Plaintiff,

v.

16 CV. 3572 (KMK)

COUNTY OF PUTNAM, PUTNAM COUNTY
DISTRICT ATTORNEY'S OFFICE,
TOWN OF CARMEL, TOWN OF CARMEL
POLICE DEPARTMENT, ADAM LEVY,
ANDRES GIL, HEATHER ABISSI,
LOURDES GONZALEZ, HENRY LOPEZ
and MICHAEL T. NAGLE,

Defendants.

x

U.S. Courthouse
White Plains, N.Y.
September 13, 2016
2:10 p.m.

Before: HON. KENNETH M. KARAS,
United States District Judge

APPEARANCES

BOIES SCHILLER & FLEXNER, LLP
BY: GEORGE F. CARPINELLO, Esq.
MARK A. SINGER, Esq.
RICHARD E. WEILL, Esq.
30 South Pearl Street, 11th Floor
Albany, N.Y. 12207
Attorneys for Plaintiff

LEWIS R. SILVERMAN, Esq.
445 Hamilton Avenue, Suite 1102
White Plains, N.Y. 10601
Attorney for Defendants
Putnam County, Putnam
County D.A.'s Office

MIRANDA SAMBURSKY SLONE
SKLARIN VERVENIOTIS, LLP
BY: MICHAEL A. MIRANDA, Esq.
The Esposito Building
240 Mineola Boulevard
Mineola, N.Y. 11501
Attorney for Defendants Levy,
Lopez, Gil, Abissi, Gonzalez

MICHAEL LONGO, Esq.
Attorney for Defendants
Town of Carmel, Michael Nagle
Town of Carmel Police Department

Sue Ghorayeb, R.P.R., C.S.R.
Official Court Reporter

1 the Military's toes at this point and we can hash that out
2 later.

3 MR. MIRANDA: Sure.

4 THE COURT: But this is — to be clear, this
5 document does not say: A, that Major Gil has been deployed
6 abroad; in fact, it says the opposite. And, B, it doesn't
7 say he is unavailable to communicate with you or anybody else
8 in connection with this case, and it's not meant to -- it's
9 not meant to be a letter from a commanding officer addressing
10 those points. But if that's all there is, then how do you
11 even get to first base on the application?

12 MR. MIRANDA: Well, Judge, we get to first base
13 because the case law, including the case law that my adversary
14 cites, suggests that when the service member is overseas,
15 it's prima facie prejudicial, and, certainly, the Court has
16 discretion. And as Your Honor can tell from the orders that
17 I presented -- and, certainly, in an abundance of caution, I
18 did not provide them to the other side for the precise reasons
19 Your Honor stated.

20 THE COURT: But if somebody — if he's, if he's at,
21 you know, at Ramstein Air Base and what his job there is —
22 let's say he is a medical officer, right. So, he's there
23 dealing with the sick and the wounded. Presumably, a person
24 in that situation would have access to some sort of telephone
25 and could communicate with his or her attorney.

1 I mean it's not just that they are abroad. The
2 statute doesn't say you get a stay if you are abroad. It has
3 to be that you're basically incommunicado. You cannot
4 communicate with your attorney, you can't assist in the case.

5 So, again, there is no document that says he is
6 abroad and there is no document that says he can't
7 communicate. So, I don't know how those cases help you.

8 MR. MIRANDA: Well, they help me because the statute
9 should not be construed literally, Judge; it should be
10 construed in a broad manner, particularly given the time
11 period we are at in our country's antiterrorism efforts, and
12 there's no doubt that this is an operation that is top secret
13 and antiterrorism.

14 THE COURT: But we don't have any document that says
15 that, that's the point.

16 MR. MIRANDA: Well --

17 THE COURT: The statute, you want to rewrite it.
18 I'm all -- listen, let's -- we all love God and country and
19 we want, you know, to take out the terrorists, nobody is here
20 saying otherwise, but you can't ignore the statute.

21 MR. MIRANDA: Judge, no one is ignoring the statute.
22 I'm providing to the -- I provided to the Court what I had
23 very quickly after I was notified, and, then, I have not heard
24 further and I don't have any means.

25 If I -- certainly, if the Court orders me to attempt

Exhibit B

www.dailyvoice.com

news

Friends, Family Bid Farewell To Danbury Soldiers Bound For Djibouti



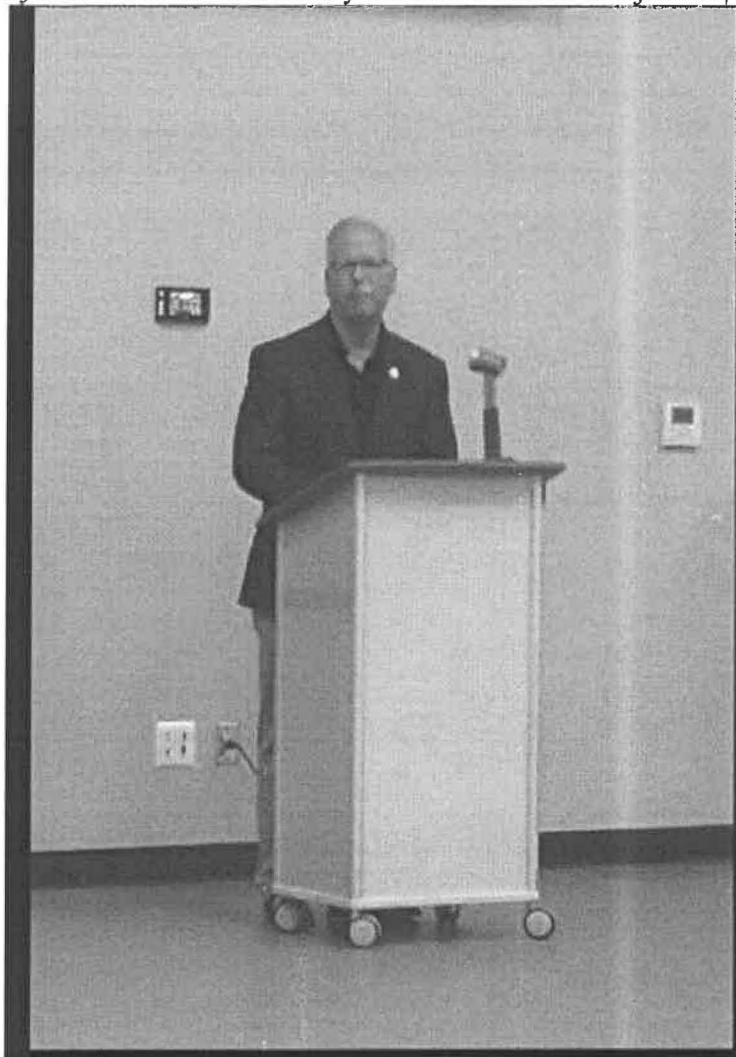
Sandra Diamond Fox 06/25/2016



Members of the 411th Civil Affairs Battalion at the Veterans Armed Forces Reserve Center in Danbury Photo Credit: Sandra Diamond Fox



Danbury Mayor Mark Boughton at the deployment ceremony for the 411th Civil Affairs Battalion Photo Credit: Sandra Diamond Fox



Mayor Mark Boughton speaks at the Deployment Ceremony in Danbury. Photo Credit: *Sandra Diamond Fox*



Family and friends of the 411th Civil Affairs Battalion enjoy a barbecue after the ceremony. Photo Credit: *Sandra Diamond Fox*



About 100 friends and family members attended the Deployment Ceremony at the Veterans Armed Forces Reserve Center. Photo Credit: *Sandra Diamond Fox*

DANBURY, Conn. -- With smiles, hugs and some tears, 32 members of the 411th Civil Affairs Battalion enjoyed a large sendoff ceremony attended by about 100 people Friday at a deployment ceremony held at the Veterans Armed Forces Reserve Center in Danbury.

The unit, a part of the U.S. Army Reserves, will be on a yearlong deployment conducting civil military operations in Djibouti this summer as a part of Operation Enduring Freedom to combat terrorism.

According to company commander Maj. Andres Gil, a ceremony is held each time a unit is about to deploy. "It gives the families of those who are deploying an official point of embarkation," he said.

Reginald Kornegay, commander of the 411th Civil Affairs Battalion, assured the friends and family members who attended the ceremony that however challenging a situation the soldiers are embarking upon, they are more than capable of conquering it.

"The Horn of Africa is extremely volatile right now. Whether this is their first or fourth time being deployed, each soldier goes into this situation together and by my direction, they will return together. I am confident that what I'm sending is America's best," he said.

Danbury Mayor Mark Boughton offered the soldiers words of encouragement and praise. "It's a noble thing that you are doing for us, for the citizens of the United States of America, so we can peaceably assemble and express our opinion. I am deeply humbled, deeply honored to be here and for the service you are providing to our nation."

This is the sixth deployment of 54-year-old First Sgt. Frank Barry of Easton. Since 1995, he has been deployed to Guantanamo Bay, Kosovo, Iraq and Africa.

"The communication with my family has gotten better each time I go. In my first deployment, we used snail mail, later we used email and now we have Skype. The last time I was deployed, in 2013, my two cats were able to hear my voice on Skype and were looking around for me," he said, chuckling.

Barry said he was not nervous about his deployment since he has been to the area before and knows what to expect. "It's beginning to be old hat," he said.

Former Bethel resident Debbie Glaberman felt bittersweet about watching as her son, 31-year-old Staff Sgt. Matthew Glaberman, was deployed. "This is his second deployment. He spent eight months in Kuwait in 2009," said Glaberman, who now lives in North Carolina.

"While I will miss him very much, I'm very proud of him for serving his country."